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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,253	12/17/2001	Andrew M. Perry	1981-004	5963

7590 07/31/2002

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EXAMINER
LUEBKE, RENEE S

ART UNIT	PAPER NUMBER
2833	

DATE MAILED: 07/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/023,253	Applicant(s) PERRY	
	Examiner Renee S. Luebke	Art Unit 2833	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

1. The papers filed on February 19, 2002 have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process. The above-identified papers, however, were not so damaged as to preclude the USPTO from making a legible copy of such papers. Therefore, the Office has made a copy of these papers, substituted them for the originals in the file, and stamped that copy:

COPY OF PAPERS
ORIGINALLY FILED

If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office of Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do **not** call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will **not** be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.*, the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.

2. The disclosure is objected to because identification of the design patent on page 1 is needed. Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-5 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobbins, et al. This device of Dobbins comprises a strap 100, and a brace 10 with many contact points (each portion 40) and two tying sections 60. The straps are tied to the tying sections without any portions thereof intruding in the support circle. It is noted that the introductory statement of intended use "for a woodwind . . ." and all other functional statements have been carefully considered, but are deemed not to impose any structural limitations on the claims distinguishable over Dobbins which is capable of such use. Whether the device is actually used in such a manner is dependent upon the performance or non-performance of a future act of use, not upon any particular structural relationship set forth in the claims.

In regard to claim 4, the first perimeter is seen to be the inner perimeter, formed by the aperture 15, and the second perimeter is seen to be the outer perimeter of the device.

In regard to claim 5, the brace forms a closed loop, the inner perimeter, that is tapered (see Fig. 6).

In regard to claim 13, the strap and brace are procured and attached in the manner claimed.

6. Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobbins in view of Thomas. As noted above, Dobbins teaches a strap, and a brace with two tying sections. The straps pass through the tying sections, but are not enlarged upon exiting therefrom. However, the use of such an arrangement is taught by Thomas and allows a simpler construction of the tying sections. Therefore, it would have been obvious to form the tying sections and strap ends on the brace of Dobbins with tied ends as taught by Thomas.

In regard to claims 8 and 9, the brace of Dobbins comprises a skirt 52 and a tapered surface.

7. Claims 6-8, 11, 13, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (see Fig. 4). This device comprises a strap 10, and a brace 15 with two tying sections. The straps are passed through the tying sections and enlarged with knots. Here too, the introductory statement of intended use "for supporting a woodwind . . ." and all other functional statements have been carefully considered, but are deemed not to impose any structural limitations on the claims distinguishable over Thomas which is capable of such use. Whether the device is actually used in such a manner is dependent upon the performance or non-performance of a future act of use, not upon any particular structural relationship set forth in the claims.

In regard to claim 13, the strap and brace are procured and attached in the manner claimed.

8. Claims 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas. In regard to claims 12 and 16, the use of heat to enlarge the end of a rope is a well known alternative to a knot, especially where

there is a chance that the knot may come undone, and is seen to have been an obvious alternative to the knot of Thomas. In regard to claim 14, the looping of a strap so that it is around a tying section is a well known alternative, especially where the size of the opening is such to easily admit a knotted strap, and is therefore seen to have been an obvious alternative to the knot of Thomas.

9. **Any response to this action may be mailed to:**
Assistant Commissioner for Patents
Washington, DC 20231

or faxed to:
(703) 872-9318 or 308-7722 or 308-7724
(informal or draft communications should be clearly labeled "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:
Crystal Plaza 4, Fourth Floor (Receptionist)
2201 South Clark Place, Arlington, Virginia.

10. Any inquiry concerning this communication from the examiner should be directed to Mrs. Renee Luebke whose telephone number is (703) 308-1511.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mrs. Paula Bradley, can be reached at (703) 308-2319.

Renee S. Luebke
Primary Patent Examiner
July 25, 2002